

BEFORE THE
Federal Communications Commission
 WASHINGTON, DC 20554

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Federal Communications Commission
 Office of Secretary

In the Matter of)

Revision of Part 22 and Part 90 of the)
 Commission's Rules to Facilitate)
 Future Development of Paging Systems)

WT Docket No. 96-18

Implementation of Section 309(j))
 of the Communications Act - -)
 Competitive Bidding)

PP Docket No. 93-253

REPLY OF ARCH COMMUNICATIONS GROUP, INC.

Pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, Arch Communications Group, Inc. ("Arch"), by its attorneys, submits the following reply in response to the oppositions to the petitions for reconsideration filed in the above-referenced dockets.¹

I. THE COMMISSION SHOULD PROVIDE INCUMBENTS THE FLEXIBILITY TO MAKE NECESSARY POST-AUCTION MODIFICATIONS

In its Petition, Arch urged the Commission to grant incumbents the flexibility, post auction, to use modified formulas based on a particular signal's actual propagation characteristics, such as those devised by Comp Comm, Inc. ("Comp Comm").² These prototype formulas, which more accurately reflect the reliable service contours of 931 MHz and exclusive 929 MHz facilities than the fixed distance tables set forth in Section

¹ Arch filed a Petition for Partial Reconsideration and Request for Clarification ("Petition") of the *Second R&O* on April 11, 1997 and an Opposition and Comments ("Opposition") on May 9, 1997.

² Arch Petition at pp. 4-5; Arch Opposition at pp. 2-3.

22.537 of the Commission's rules, would allow an incumbent to make necessary modifications to its system post auction without sacrificing service to the public or encroaching upon the market area licensee's white space.³

Numerous other parties have endorsed the need for increased flexibility in incumbents' ability to make necessary modifications post-auction without encroaching upon the market area licensee's white space.⁴ PageNet, however, opposed allowing incumbents to use specific formulas in making post-auction modifications.⁵ PageNet contends that sole reliance on the fixed tables "provides licensees with significant flexibility."⁶ Arch strongly disagrees with PageNet for the reasons explained in Arch's Petition. Arch continues to believe that the Commission should adopt a real world formula, such as that proposed by Comp Comm, in order to provide incumbents with the flexibility to make necessary modifications in the post auction environment.

II. THE COMMISSION SHOULD MODIFY ITS GEOGRAPHIC AREA AUCTION PROPOSALS TO DETER SPECULATION

Arch's Petition requested that the Commission take several actions to minimize the harmful effects of speculators in paging auctions. One proposal which received

³ In its Opposition, Arch urged the Commission -- should it decline to adopt the Comp Comm formulas -- to allow incumbents to use the formula proposed by ProNet, Inc., which would employ a median field strength of 21 dBuV/m. (See Arch Opposition at p. 3, citing to ProNet Petition at pp. 17-18.) This which would at least provide some flexibility to incumbents to make internal modifications.

⁴ Opposition of ProNet at pp. 10-12, American Paging at pp. 4-6 and AirTouch at pp. 16-17.

⁵ Opposition of PageNet at pp. 11-12.

⁶ PageNet Opposition at p. 7.

widespread support suggested that the Commission should exempt from auction those paging channels on which incumbents can certify that 70 percent or more of a market's population is encompassed by the incumbents' existing contours on these channels.⁷

Arch continues to urge adoption of this proposal.

Numerous commenters also requested that the Commission adopt an upfront payment scheme which requires applicants to pay a modest sum for each license specified in their short-form application.⁸ Only one party, Oregon Telephone Corporation ("Oregon"), opposed this idea.⁹ Oregon contends that adoption of a requirement for separate upfront payments for each license on which an applicant plans to bid would result in a potential increase in costs to small carriers such as itself.¹⁰ As PCIA pointed out in its Petition, however, the absence of a required minimal upfront payment for each authorization on which an applicant seeks to bid, when combined with the Commission's decision to allow applicants to mark the "all" box on the FCC Form 175, may actually increase the amount a small business eventually would have to pay for an authorization because of the additional funds it would have to expend in support of its preparations for the auction.¹¹ Moreover, the type of upfront payment Arch and others propose is a

⁷ See Petitions of Arch at p. 7, PCIA at pp. 5-6, PageNet at pp. 4-6, and Metrocall at p. 11; Oppositions of Metrocall at pp. 11-12 and AirTouch at pp. 6-7.

⁸ Petitions of PageNet at p. 12, PCIA at pp. 10-13, and Arch at pp. 7-8; Arch Opposition at p. 4.

⁹ Oregon Opposition at p. 1.

¹⁰ *Id.*

¹¹ PCIA Petition for Reconsideration at pp. 11-12.

modest sum designed to establish a *bona fide* intent on an applicant's part to participate in the auction, rather than to create undue hardship to small businesses.

III. NATIONWIDE LICENSEES SHOULD BE EXCLUDED FROM AUCTION

In the *Second R&O*, the Commission exempted holders of nationwide exclusivity from auction.¹² Only one party, the law firm of Blooston, Mordkofsky, Jackson & Dickens ("Blooston"), criticized the Commission's action, and appeared to ask the Commission to remove the exclusivity rights of nationwide licensees.¹³ Blooston was opposed by several parties.¹⁴ For example, Metrocall points out that Blooston's Petition amounts to nothing more than an "untimely petition for reconsideration of the FCC's nationwide paging rules" and should therefore be "summarily dismissed by the Commission."¹⁵ PageMart II concurs, pointing out that the Commission's previous actions finding that nationwide exclusivity at 931 MHz and 929 MHz is in the public interest "have long ago become final, and this is not the place to reconsider those decisions."¹⁶

In its Opposition, Arch also explained that adoption of Blooston's proposal would be in direct contravention of Congressional directives in Section 309(j)(1), which limits the Commission's auction authority only to those situations involving mutually exclusive

¹² *Second R&O* at ¶ 50.

¹³ *See* Blooston Petition at pp. 5-6.

¹⁴ Oppositions of Metrocall at pp. 6-10, PageMart II at pp. 1-5, PageNet at pp. 1-8, AirTouch pp. 7-9.

¹⁵ Metrocall Opposition at pp. 7-8.

¹⁶ PageMart II Opposition at p. 3.

applications, and Section 309(j)(6)(E), which directs the Commission to avoid mutual exclusivity through “service regulations, and other means” such as the Commission’s current nationwide exclusivity rules.¹⁷ Blooston failed to even address these statutory impediments to its position.

IV. THE COMMISSION SHOULD CLARIFY THAT IT HAS NOT ELEVATED INCUMBENTS OPERATING ON SHARED PAGING CHANNELS TO EXCLUSIVE STATUS

Arch requested clarification that incumbents operating on shared paging channels have not been elevated to exclusive status.¹⁸ Numerous other parties support the need for clarification on this point.¹⁹ As PCIA correctly pointed out, “the effect of this action is to give such non-exclusive licensees greater protection rights than they had previously attained under the Commission’s rules, an outcome nowhere explained or justified by the Commission, and probably not intended.”²⁰

Two parties have taken a contrary view.²¹ These parties contend that *de facto* exclusivity should be extended to incumbents on the shared paging channels. This is clearly not what the Commission intended.

¹⁷ Arch Opposition at p. 5 (citing 47 U.S.C. 309(j)(1) and 47 U.S.C. 309(j)(6)(E)).

¹⁸ In paragraph 57 of the *Second R&O*, the Commission states that “the public interest would be served by allowing incumbent (non-geographic) paging licensees to continue to operate under their existing authorizations *with full protection from co-channel interference*.” (emphasis added) This statement might be interpreted to confer on shared channel paging incumbents interference rights normally associated with exclusive channels.

¹⁹ Opposition of ProNet at pp. 14-15 and AirTouch at pp. 19-20.

²⁰ PCIA Petition for Reconsideration at p. 16.

²¹ Oppositions of American Paging at pp. 2-4 and Metrocall at pp. 17-19.

One of these parties, American Paging, cites to a statement in the *Notice of Proposed Rulemaking* in this proceeding in an attempt to support its proposition that the Commission intended to extend exclusive status to incumbents on shared paging channels.²² That excerpt states that “in the event that we adopt our proposals for geographic area licensing, all existing PCP facilities would receive full protection as incumbents.”²³ American Paging’s reliance on this language is misplaced. The cited statement clearly does not extend exclusivity to every shared channel. In fact, the excerpt appears in a section of the *Paging Auction NPRM* titled “Licensing of 929 MHz PCP *Exclusive* Channels,”²⁴ and it only addresses licensees that had already taken affirmative steps to qualify for exclusivity; it does not address every incumbent operating on shared channels. Indeed, the Commission addressed licensing of the non-exclusive PCP channels in an entirely different section of the *Paging Auction NPRM*.²⁵ More to the point, the Commission stated in the *Second R&O* that it decided not to grant exclusive status to shared paging channels because the Commission determined that the cost and disruption of this change in policy outweighed any public benefits.²⁶

²² American Paging Opposition at p. 2.

²³ *In the Matter of Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act - - Competitive Bidding*, WT Docket No. 96-18 and PP Docket No. 93-253, Notice of Proposed Rulemaking, 11 FCC Rcd 3108, ¶ 148 (1996) (“*Paging Auction NPRM*”).

²⁴ *Id.* (emphasis added).

²⁵ *Id.* at ¶ 149.

²⁶ *Second R&O* at ¶ 40.

Arch therefore requests the Commission to clarify that it did not elevate incumbents operating on shared channels to exclusive status.

V. EXPIRED CONSTRUCTION PERMITS SHOULD NOT BE COUNTED IN DETERMINING COMPOSITE INTERFERENCE CONTOURS OF INCUMBENT SYSTEMS

Arch joins PageNet in opposition to a proposal made by ProNet to include expired construction permits in determining composite interference contours of incumbent systems.²⁷ As PageNet points out, while some of these expired construction permits “may, in part, be due to delays in the processing of applications by the Commission, these perceived delays cannot be the basis for allowing permittees to hold white space after their construction permits have expired. This would reward speculators or insincere permittees who filed applications, but never intended to serve the public.”²⁸ Arch urges the Commission to place on public notice a list of those construction permits which it believes to have expired. After permittees have had an opportunity to determine the accuracy of the list and petition any inadvertent errors, the Commission should then purge these expired construction permits from its database.²⁹

²⁷ See PageNet Opposition at pp. 8-9, citing to ProNet Petition at p. 4.

²⁸ PageNet Opposition at p. 8.

²⁹ Additionally, Arch agrees with PageNet in urging the Commission to release information regarding how much population is already served by incumbents -- and more accurately, how much population is enclosed within incumbents' composite interfering contours -- in a given market in order to allow perspective bidders to understand how much white space is available in that market. (See PageNet Petition at pp. 16-17.) As PageNet explains, “this should aid in thwarting speculation investment schemes because, for the most part, bidders will understand that buying the white space in an MTA that covers less than one-third of the population is simply a waste of money.” (*Id.* at p. 16.)

VI. AN INCUMBENT'S PROTECTED CONTOUR SHOULD INCLUDE AREAS IN WHICH A GEOGRAPHIC AREA LICENSEE CANNOT PROVIDE SERVICE

AirTouch points out that “incumbents should be permitted to provide service to areas in which the geographic area [licensee] could not provide service as a result of the interference protection requirements.”³⁰ Arch and numerous other parties agree with this proposition.³¹

The Commission found that it was in the public interest to allow incumbents to trade in their site-specific licenses “for a single system-wide license demarcated by the aggregate of the interference contours around each of the incumbents’ *contiguous* sites operating on the same channel.”³² In creating this aggregate contour from contiguous sites based on Section 22.537 of the Commission’s rules, however, certain holes and gaps may be created in which a geographic area licensee cannot place a transmitter without causing co-channel interference to the incumbent’s existing system.³³ Arch joins the large number of other parties in this proceeding in requesting the Commission not define the term “contiguous” so narrowly as to exclude from an incumbent’s protected compos-

³⁰ AirTouch Opposition at pp. 15-16.

³¹ Petitions of Blooston at pp. 8-9; Metrocall at pp. 22-23; Morris Communications, Inc. at p. 11; Nationwide Paging, Inc. at p. 11.

³² *Second R&O* at ¶ 58 (emphasis added).

³³ As Arch previously pointed out, while it supports increased flexibility for incumbents to make internal system modifications post auction, it agrees with the Commission’s decision to use the fixed distance tables as set forth in Section 22.537 of the Commission’s rules for purposes of establishing an incumbent’s protected interfering contours for 931 MHz and exclusive 929 MHz channels prior to auction. See Arch Opposition at pp. 1-2; Arch Petition at pp. 1-2.

ite contour those areas in which a geographic licensee cannot place a transmitter.³⁴

Service will be denied to the public in those areas if the Commission does not include them within incumbents' protected systems.

Arch opposes PageNet's suggestion that it is "impermissible to claim that transmitters are 'fill-in' when such transmitters are used to bridge non-contiguous coverage areas in order to serve new area" to the extent that such language could be construed to apply to those holes and gaps described above in which a geographic licensee could not provide service.³⁵ The primary concern of Arch and numerous others is to ensure that service is provided to the public in those areas in which a geographic area licensee cannot provide service; this is not an attempt to increase an incumbent's contours at the expense of the geographic area licensee. Arch does not suggest that incumbents should be given white space in which the geographic licensee could legitimately provide service.

VII. CONCLUSION

Arch requests that the Commission: (1) permit incumbents the flexibility to make necessary modifications to their systems post auction through the use of modified formulas based on a particular signal's actual propagation characteristics; (2) modify its geographic auction proposals so as to deter possible speculation; (3) reject the arguments raised in Blooston's Petition, and maintain the auction exemption currently applicable to nationwide licensees; (4) not allow expired construction permits to be counted in

³⁴ AirTouch Opposition at pp. 15-16; Petitions of Blooston at pp. 8-9; Metrocall at pp. 22-23; Morris Communications, Inc. at p. 11; Nationwide Paging, Inc. at p. 11.

³⁵ See PageNet Opposition at p. 11.

determining an incumbent's composite interference contours; (5) clarify that it did not intend to elevate incumbents operating on shared paging channels to exclusive status; and (6) include in an incumbent's protected contour those areas in which a geographic licensee cannot provide service.

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CERTIFICATE OF SERVICE

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